

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/7701240>

Incorporating Feminist Theory and Insights Into a Restorative Justice Response to Sex Offenses

Article *in* Violence Against Women · June 2005

DOI: 10.1177/1077801205274570 · Source: PubMed

CITATIONS

73

READS

1,045

2 authors, including:



[Quince Hopkins](#)

University of Maryland, Baltimore

14 PUBLICATIONS 267 CITATIONS

SEE PROFILE

Incorporating Feminist Theory and Insights Into a Restorative Justice Response to Sex Offenses

C. QUINCE HOPKINS

Washington and Lee University School of Law

MARY P. KOSS

University of Arizona

Sex offenses, particularly nonpenetration sex offenses and acquaintance sexual assault, are all too common. Because these crimes reinforce women's fear of crime and restrict spatial and social freedom, it is paramount for the justice system to act affirmatively; however, it does not. This article identifies several failures in the current response to these sex offenses. We describe the research demonstration project, RESTORE, operating in Pima County, Arizona, which uses a restorative justice response as a way of remedying some of those failures. Identifying central feminist insights that guided the development of that project, the article addresses concerns raised by feminists about the use of restorative justice for gendered violence. We conclude that most if not all of these concerns apply to cases of ongoing domestic violence—cases specifically excluded from the RESTORE program—rather than to cases of acquaintance sexual assault or nonpenetration sex offenses.

Keywords: *feminist theory; restorative justice; sexual violence*

SEX OFFENDING: CURRENT PRACTICE AND PROBLEMS, AND THE POTENTIAL OF A RESTORATIVE JUSTICE ALTERNATIVE

Sex offenses are all too common. The National Violence Against Women Survey documented that 18% of women in the

AUTHORS' NOTE: RESTORE is funded under a U.S. \$1.5 million grant from the Centers for Disease Control and Prevention. We thank their respective institutions, the Washington and Lee University Frances Lewis Law Center, and the University of Arizona Mel and Enid Zuckerman College of Public Health. We also thank Jim Ptacek for substantial comments on a draft of this article.

VIOLENCE AGAINST WOMEN, Vol. 11 No. 5, May 2005 1-31

DOI: 10.1177/1077801205274570

© 2005 Sage Publications

United States had been raped (Tjaden & Thoennes, 1998). Six of every seven rapes involved people who knew each other. Nonpenetration offenses are even more prevalent; almost one half of U.S. women have encountered an indecent exposé in their lifetime (Riordan, 1999). Recent data projected that between 20% and 25% of the more than eight million women students in the United States will be raped; within the past 7 months, 5% (approximately 400,000 women) had someone expose their sexual organs to them, 5% received obscene telephone calls, and another 21/2% were observed naked without their permission (Fisher, Cullen, & Turner, 2000).

Because these crimes reinforce women's fear of crime and restrict spatial and social freedom, it is paramount for the justice system to act affirmatively; however, it does not. First, the level of reporting for these kinds of offenses is low; according to the Rape in America Study, just 16% of rapes are reported to police, often because women perceive that the processes offered by the criminal justice system will do nothing for them (Kilpatrick, Edmunds, & Seymour, 1992). This belief is not without basis; with limited funds, prosecutors typically focus precious resources on the small number of severe offenses. Of reported rape cases, 50% to 75% are declined for prosecution nationwide, 8 of 10 times against the victim's expressed wishes (Campbell et al., 1999). Less than 1% of all intimate rapes result in incarceration (Tjaden & Thoennes, 2000). Furthermore, statutory punishment for misdemeanor sexual offenses, such as peeping or indecent exposure, is minimal—typically just a fine. In practice, most offenders merely receive unsupervised probation (K. Mayer, Assistant Pima County Attorney, personal communication, February 8, 2002). As a result, most offenders exit the system with no preventive measures in place to control their behavior. In addition, incarceration and fines paid to the state are of only minimal (if any) importance to many victims of nonstranger sexual assault. Instead, victims often are most interested in an opportunity to tell their full story and in hearing the offender accept responsibility and apologize for the assault (Des Rosiers, Feldthusen, & Hankivisky, 1998).

Even when criminal justice sanctions are applied, they are only modestly effective. Four of 10 rapists are rearrested for rape (Prentky, Lee, Knight, & Cerce, 1997). In addition, the effectiveness of criminal justice prevention by registration and notification

is not established. There has been no significant difference in rearrest rates found between groups of offenders required to notify the community before they move in and those who are not required to do so (Burdon & Gallagher, 2002; Schram, Miller, & Milloy, 1995). In contrast to other justice interventions, sex offender treatment is modestly successful, and offering it in the community as opposed to prisons yields better results (Gallagher, Wilson, Hirschfield, Coggeshall, & MacKenzie, 1999).

Even if it did respond proactively, the nature of our criminal justice system ensures that flaws in our current response would remain. Research has documented that the legal process itself causes harm to victims; this law-caused injury is termed *critogenic harm* (Gutheil, Bursztajn, Brodsky, & Strasburger, 2000; also see Des Rosiers et al., 1998; Frazier & Haney, 1996). Problematic but constitutionally dictated features of the courtroom experience for sex crime victims include the public nature of the procedure combined with the demand to retell intimate details of the offense, the sequestering of witnesses who may also be the victim's family and supporters, and defense attorney questioning that exacerbates self-blame. The ultimate battle in acquaintance rape trials, where consent will almost always be the determinative issue, is whether the victim or the offender is telling the truth. Yet it is only the victim whose veracity is questioned because most offenders will safely stand mute, insulated by the constitutional protections of the presumption of innocence and the privilege against self-incrimination (Baker, 1999). As a consequence, data from 990 criminal trials for rape showed that most victims believed that rapists had more rights, thought the system was unfair, felt victims' rights were not protected, and expressed concerns that they were deprived of information about and control over the handling of their case (Frazier & Haney, 1996).

Most disturbing to victims, however, is the perpetrator's unmovable stance that he is not guilty of a crime (Holmstrom, & Burgess, 1975, 1978; Madigan & Gamble, 1989; Martin & Powell, 1994; Matosian, 1993; Sanday, 1996). Although this denial of guilt again derives from defendants' constitutional rights, the failure to acknowledge intentional harm done to others not only flies in the face of victims' expressed preferences for just such an acknowledgment but also has been shown in experimental studies to cause participants to aggress against those who have

intentionally harmed them. This tension is lowered when the wrongdoer expresses remorse and remains high in the absence of such expressions (Ohbuchi, Kameda, & Agarie, 1989). Despite this fact, and although acceptance of responsibility by a perpetrator may lower the sentence actually imposed, expressions of remorse themselves are not typically a major factor in a judge's determination of an offender's sentence (Petrucci, 2002; on the use of apologies in civil litigation, see Cohen, 1999, 2000; Orenstein, 1999).¹

Thus, even if prosecution of cases were more aggressive, survivors would still be traumatized by the adversarial process (Gutheil et al., 2000). They would still lack control over the prosecution process, still be restricted in their ability to tell the full story of what happened to them, and remain subject to cross-examination by defense counsel whose job is to discredit survivors and their account of what the offender did to them. And they would still be only an indirect recipient of redress from the responsible party, including never receiving the hoped-for admission of wrongdoing or an expression of remorse for the harm inflicted.

As we have discussed elsewhere, restorative justice suggests an alternative approach that not only would increase the number of cases in which offenders are held accountable but also holds the promise of promoting rather than interfering with victim recovery, promoting community involvement in crime control, and providing for safe offender reintegration into the community (Koss, 2000; Koss, Bachar, & Hopkins, 2003a, 2003b). These added benefits increase the likelihood of preventing future sex offending by individual perpetrators and to enhancing prevention of sex offending generally due to increased community awareness and education.

In other venues, we describe in depth what such a restorative justice approach to sex offending should look like to yield the highest likelihood of success. Following this model, we implemented a pilot research project in Pima County, Arizona called RESTORE. Cognizant of the importance of developing such a program with input from and accountability to feminist advocates and people of color, this program was developed in collaboration with feminist organizations, criminal justice officials, and leaders from communities of color in Pima County. Members of these organizations, agencies, and communities not only participated

in focus groups but also are players in the infrastructure of RESTORE. In addition, the program operates under the aegis of the local sexual assault center, ensuring feminist advocates' ongoing oversight and input throughout the process.

RESTORE employs a victim-driven, postarrest, but preconviction community conference response to certain sex offenses. In particular, RESTORE addresses date and acquaintance rape where force did not exceed that necessary to compel unwanted sex, and nonpenetration sex offenses, including peeping and indecent exposure. On admission to the program, the responsible party first undergoes a psychosexual evaluation, and a sex-offender treatment plan is developed and implemented in accordance with that evaluation; each plan includes regular monitoring of the responsible party for a period of 12 months. After extensive preparation, the survivor and the survivor's identified community support network meet face-to-face, in a professionally facilitated conference, with the responsible person and the responsible person's identified support network. The survivor is given a full opportunity to describe what the responsible person did and the resultant harm to her and to her relationships with others, after which the responsible person acknowledges the wrong committed and the harm done. The survivor's and the responsible person's support networks are then given an opportunity to describe the impact the wrong has had on their lives. The participants next develop a redress agreement that outlines what the responsible person is going to do to make right the wrong done, not just to the survivor but also to the community support network and the broader community. A Community Accountability and Reintegration Board, made up of carefully prescreened members of various institutions and perspectives within the community, oversees his compliance with that agreement subsequent to receiving extensive training. Successful completion of the terms of the agreement results in a dismissal of charges, while the case is referred back to the prosecutor should the responsible person fail to abide by the terms of the agreement.

Such a program triggers a dual challenge. First, in the United States, a restorative justice response must still take account of the legal rights of participants not to run afoul of either the federal or state constitutions. The legal doctrinal dictates and theoretical concerns include, among other issues, taking account of a

criminal defendant's right to legal counsel and a jury trial, the privilege against self-incrimination, and the issue of proportionality. In addition, certain state constitutions include victim's rights protections, which must be considered when developing an alternative justice response. We address these legal challenges elsewhere (Hopkins & Koss, 2005).

Second, a restorative justice approach to violence against women must not cause further harm to survivors but rather should aim to avoid the secondary victimization that traditional criminal justice causes. A restorative justice response to sexual violence must, therefore, incorporate feminist theory and adequately respond to feminist critiques of using restorative justice as a response to violence against women. The remainder of this article focuses on this second challenge, demonstrating how a restorative justice approach, as embodied in RESTORE, not only responds to feminist concerns about the application of restorative justice to violence against women but also is consistent with various strands of feminist theory.

In the following section, we outline key feminist concepts relevant to a restorative justice response to violence against women and then address the central concerns expressed by feminists about such an approach. In so doing, we note relevant distinctions and similarities between sexual assault and domestic violence and describe specific ways RESTORE incorporates feminist insights and addresses feminist concerns.

FEMINIST THEORY, RESTORATIVE JUSTICE, AND VIOLENCE AGAINST WOMEN

Feminist theory comprises different but overlapping philosophical and political stances. Although there are several ways one might separate these strands, scholars tend to divide them into some or all of the following categories: liberal, cultural, radical, Marxist and/or socialist, postmodern (or poststructuralist), and multiracial feminism (see, e.g., Cain, 1997; Curran & Renzetti, 2001; Ollenburger & Moore, 1998; Sokoloff, Price, & Flavin, 2004; White, 1999).

Liberal feminists, also referred to as sameness or rule-equality feminists, argue that formal equal treatment of men and women will result in formal and functional equality between the sexes

(Eichner, 2001). "‘Sameness feminists’ focus on the similarities between individual men and individual women [leads] them to advocate ‘gender-neutral’ categories that do not rely on gender stereotypes to differentiate between men and women" (Williams, 1989, p. 837; cf. Kay, 1985; Law, 1984). In the eyes of liberal feminists, the goals of law reform are laws and practices that respond to violence against women, particularly violence by intimates or acquaintances, in the same way that those laws and practices respond to stranger violence against men. To the extent that women’s experiences of sexual violence are only partially considered by a theoretically objectively neutral legal system, this formal system often fails in providing any redress, much less a feminist response (Cain, 1997). The failure of the system, in turn, may bolster the notion that sexual violence against women is not a serious crime. A victim-centered restorative justice response that holds an offender accountable to her and the relevant community may yield the opposite outcome. Such a response thus moves a step toward satisfying liberal feminists’ demand that those who inflict gendered harms receive sanctions from the justice system just as those who engage in nongendered violent crime are sanctioned by that system.

Cultural feminists, also referred to as substantive equality or difference feminists, disagree that alteration of formal rules will result in actual equality for women; equal treatment, they argue, disadvantages women because the baselines favor men (Ertman, 1998; Fineman, 1983). Cultural feminists claim that traditional religious, economic, political, and judicial institutions are masculinist by nature and masculinist in practice. For instance, these institutions are masculinist in nature in that they are structured hierarchically, rather than on a collaborative model (White, 1999). For cultural feminists informed and persuaded by Carol Gilligan’s work on women’s ethic of care, collaboration and interpersonal relationships are particularly valued by women, whereas hierarchy is particularly embraced by men (Gilligan, 1982; West, 1988). Many (but not all) cultural feminists today, however, claim not that women are, in fact, inherently different from men, but that certain traits and values are perceived as feminine or female or as masculine or male. These masculine or male traits, the argument continues, are embraced by legal and other institutions, while feminine or female traits are devalued,

marginalized, or even excluded by those institutions (West, 1988). In this sense, for cultural feminists these institutions are masculinist in practice to the extent that the rules under which they function exclude women's unique voices and lived experiences. West (1998) argued, for instance, that ostensibly neutral legal evidentiary rules do not accommodate many women's particular narrative method, thus yielding a crabbed account of any given woman's experience. From a cultural feminist perspective, then, recognition of women's experiences and contributions is a critical component to helping promote equality (Ertman, 1998; West, 1988).

Insofar as cultural feminism insists on the importance of human interconnectedness and relationships, a justice system response would be feminist if it emphasized the damage that sexual violence causes to relationships, rather than only recognizing the wrong done to the abstract state. Restorative justice takes exactly this approach. Furthermore, a victim-centered restorative justice response that incorporates a survivor's full experience satisfies cultural feminism's call that the justice system take account of women's voices.

Another group of scholars, including most notably Catharine MacKinnon, contend that the overarching oppression is gender inequality or sexism (Curran & Renzetti, 2001). This theoretical prong traditionally is referred to as either dominance feminism or radical feminism, although some postmodern and multiracial feminists sometimes use the term *radical feminism* to describe those respective theoretical tracks (see, e.g., Ertman, 1998; and see generally Moraga & Anzaldúa, 1983). Traditional radical feminists argue that religious, economic, political, and judicial institutions undergird as well as create men's dominance over women, emphasizing the centrality of patriarchy and masculine control of women's labor and sexuality (Curran & Renzetti, 2001; Flavin, 2004; MacKinnon, 1989; Sokoloff et al., 2004; cf. Ertman, 1998).² Radical feminism reveals how male domination of women happens most directly through, in, and around sex and sexuality; sexual assault is simply an extreme example of this dynamic (Ollenburger & Moore, 1998; Sokoloff et al., 2004; cf. Flavin, 2004, p. 38, describing how male-bias crimes achieve masculinity). For radical feminists, the fact that sex is the arena where masculine control is most clearly exerted speaks to just how deeply

patriarchal domination goes in our society. For radical feminists, the oppression of women will not be eradicated in liberal or Marxist feminist models because those models do not address “the connections of sexual violence, struggles for control of women’s bodies, and the push for heterosexual and male privileges” (Ollenburger & Moore, 1998, pp. 22-23; see also Curran & Renzetti, 2004). A program such as RESTORE that focuses on sexual violence toward women thus aims at precisely the locale that radical feminists argue is where misogyny sits most squarely.

Marxist feminism and socialist feminism share the lens of looking at gender through the lens of class and economic oppression in the public and private spheres (Sokoloff et al., 2004). Marxist and socialist feminists focus on the expropriation of women’s labor through unpaid work in the home, prostitution, and so on. For Marxist feminists, economic and class oppression are the primary oppression. These feminists link women’s oppression to the origins of private property and to the social organization of the economic order. Thus, to a Marxist feminist, only the overthrow of the existing economic order and class structure will liberate women (Ollenburger & Moore, 1998). In criminology, Marxist feminists point out that violence against women is not equally prevalent in all societies. Noting that modern capitalist societies have dramatically high rape rates, they argue that “male dominance that breeds male violence is a product of the exploitative class relations inherent in capitalism” (Curran & Renzetti, 2004, p. 223).

For socialist feminists, by contrast, “both patriarchy and class are regarded as primary oppressions” (Ollenburger & Moore, 1998, p. 23). Only through radical social change of not just the economic system but also other societal institutions such as the traditional marital family will women achieve liberation, according to socialist feminists. In criminology, socialist feminists have exposed, for instance, the higher victimization rate of poor women by men. As Curran and Renzetti (2004) summarized,

While women of all races and ethnicities [in the United States] as well as all social classes may be victims of male violence, some groups of women, especially poor women, are at greater risk of victimization than other groups of women. (p. 221).

Perhaps most abstractly, contemporary postmodern feminists—sometimes referred to as poststructuralist feminists—draw on the notion of social constructionism and argue that legal discourse itself creates the categories of women that law then proceeds to regulate. Despite their heavy emphasis on social constructionism, including the social construction of difference itself, postmodernists also “recognize a responsibility to build bridges across diverse groups in order to work collectively” (Flavin, 2004, p. 36; and see Alcoff, 1994). In part, postmodern feminists seek to eradicate inequality by undermining the existing binary construct of male and female that has the effect of subordinating women to men (see generally Eichner, 2001; Ollenburger & Moore, 1998). Postmodern feminists thus advocate a complete restructuring of what society understands as available gender roles (Ertman, 1998). To the extent that sexual violence toward women arises out of and relies on polarized gendered roles of male aggressor and female passive, breaking down those constructs, the argument goes, may result in reductions of men’s sexual assaults of women (Eichner, 2001). In a more general sense, however, restorative justice maps onto the postmodern drive to break down categories. Thus, by providing for a particularized response to a crime of sexual violence, restorative justice insists that survivors and responsible parties be viewed as something other than predetermined caricatures of victim and offender.

The final category, multiracial feminism, is an overarching concept first described by Zinn and Dill (1996) as embracing several strands of feminist theory: womanism, women of color feminism, critical race feminism, and multicultural feminism (cf. Sokoloff et al., 2004, referring to this group of scholars as third-wave feminists). Drawing on the social construction theory embraced by postmodern feminism, multiracial feminism aims to uncover the importance of race in understanding the social construction of gender. Furthermore, multiracial feminists reveal how “race, and the system of meanings and ideologies which accompany it, is a fundamental organizing principle of social relationships” (Zinn & Dill, 1996, p. 324).

In addition to emphasizing race as a critical site of oppression, multiracial feminists acknowledge “how race both shapes and is shaped by a variety of other social relations” (Zinn & Dill, 1996, p. 324). The term *multiracial feminism* thus “underscores race as a

power system that interacts with other structured inequalities to shape genders" (Zinn & Dill, 1996, p. 324). This interaction, referred to as intersectionality, focuses on "the interlocking sites of oppression . . . examin[ing] how the categories of race, class, gender, and sexuality in intersecting systems of domination rely on each other to function" (Sokoloff et al., 2004, p. 3; see also Crenshaw, 1991). By taking into account all of the forms of oppression that are individually prioritized by the other feminist theories discussed above, multiracial feminism arguably is the most complete and nuanced of all feminist theories to date. Thus, multiracial feminists often rightly criticize other feminist theories for ignoring race altogether or subordinating it to other oppressions rather than understanding them as interlocking systems of oppression.

Finally, in addition to an insistence on the importance of race as a category of analysis, multiracial feminism situates feminist theory in the related dialogue about colonization and postcolonization studies, as well as within a global human rights framework (see Ollenburger & Moore, 1998). Notably, racism and colonization play an important role in the debate about restorative justice not just in the United States but also in Canada and elsewhere (see, e.g., Coker, 1999; Razack, 1994). Furthermore, that restorative justice forms a focal point in current international human rights debates (see, e.g., Drumbl, 2002) means that multiracial feminism meets restorative justice head-on in the field of international human rights, thereby substantially enriching the dialogue and critique about restorative justice initiatives globally.

In the context of violence against women, multiracial feminist theorists and empiricists have significantly expanded our understanding of and knowledge base about violence against women of color. For instance, Sarah Deer (2004b, in press **UPDATE?**) argued that justice responses to violence against Native women must take into account the empirical data that reveal differences in the sexual assault of members of many Native American tribes compared with other racial groups (for empirical data see Bachman, 2003; Greenfield & Smith, 1999; Tjaden & Thoennes, 2000). For instance, the rate of sexual assault of urban Native women is significantly higher than for other racial groups (Deer, 2004b, in press **UPDATE**). One in three urban Native women will be sexually assaulted during their lifetime, and although the

average annual rape rate for all races is 1.9 per 1,000 people, the rate for Native American women is 7.2 per 1000 people (Deer, 2004b, in press **UPDATE**). This rate is almost 3 times the rape rate of White women and more than double that of African American women.

Furthermore, although most rape occurs intraracially, Native American women are raped by White men more often than White women are raped by men of another race. To the extent that these crimes are perpetrated by White men against Native women, gender domination alone, patriarchy alone, or class alone cannot explain this variance. The historical treatment of Native American women gives some insight into the roots of these discrepancies. Historically, European explorers and settlers in North America engaged in what has more recently been understood as part of a practice of genocide, namely the rape of Native American women and mutilation of their genitals and reproductive organs (Deer, 2004a, 2004b, in press **UPDATE?**). Ongoing racism and the legacy of colonization are clearly at play in sexual assault of Native American women and thus must form a major part of our analysis of sexual assault of Native women and be incorporated into consideration of new justice responses such as restorative justice (Deer, 2004a). For example, multiracial feminist Sherene Razack (1998) warns that the failure of White male judges in northern Canadian communities to consider the impact of colonization and racism when sentencing male perpetrators of sexual assault to a restorative justice variety of community-based punishment results in further harm and no justice for the victim of those sexual assaults. Donna Coker (1999) raised similar concerns about Navajo Peacemaker Courts that address intimate violence against women (see also Deer, 2004a).

Other multiracial feminist theorists and empiricists specifically address the historical and sociocultural context surrounding rape of African American women, including a similar history of the use of sexual violence to facilitate the enslavement of African people (see, e.g., Iglesias, 1996; McNair & Neville, 1996; Wyatt, 1992). These scholars noted that in the United States historically the rape of Black women by Whites was not treated as a crime, while sex between a White woman and a Black man was treated harshly, often considered a lynching offense (Wyatt, 1992). The former continues to affect African American women today; studies

reveal that African American women often do not report being raped because they fear they will not be believed by those in the criminal justice system (Sorenson, 1996). The latter is the case despite the fact that, as Paul Heinegg's research on those listed as "free Blacks" in the South reveals, most biracial children born during slavery were the result of a consensual interracial relationship between a White woman and a Black man (Owens, 2004). The history in the United States is thus one of dismissing the problem of rape of Black women, while at the same time overreacting to imagined or potential rape of White women by Black men (Wriggins, 1983).

Racism continues to infect the criminal justice system, not just in cases involving sexual assault but also more generally. African American men are overrepresented in correctional institutions in the United States in comparison with their representation in the total population. African American men constitute 43% of all sentenced inmates in the United States (Beck & Harrison, 2001 **CORRECT YEAR**) but make up only 6% of the total U.S. population (Grieco & Cassidy, 2001). African American men are similarly overrepresented among incarcerated sex offenders, despite the fact that they are no more rape prone than White men (see Greenfeld, 1997). African American men constitute more than 40% of incarcerated rapists, while White men constitute 45% (Beck & Harrison, 2001 **CORRECT YEAR**). For rapes and sexual assaults combined the number is lower; however, African American men still constitute 30% of rapists or sexual assaulters, compared with 55% for White men (Beck & Harrison, 2001 **CORRECT YEAR**).

It could be argued that these numbers merely reflect the fact that arrest and incarceration are correlated with poverty (see Fagan, West, & Holland, 2003), and poverty is correlated with race (see Proctor & Dalaker, 2002; Sorenson & Siegel, 1992). However, other researchers have demonstrated that race plays a determinative role in decisions to prosecute or not prosecute rape cases. Many studies have shown that decisions about charging in rape cases are affected by race, age, and occupation of the perpetrator and the victim, their relationship, the severity of the violence, and the victim's risk-taking behavior, drug use, reputation or moral character (Whately, 1996). Women of color and victims of acquaintance rape are simply less likely to have their cases

pursued by criminal justice authorities (Campbell, 1998; Frohmann, 1997, 1998; Razack, 1998).

These are phenomena that have not escaped African American women's notice (Sorenson, 1996; Wyatt, 1992). In addition to fearing they will not be believed if they report the rape, women survivors of color must contend with the tension between their needs for justice and the obligations they feel to buffer racism in the criminal justice system. Thus, although African American women are the most lenient in their definition of rape, they nonetheless are the least likely to report being raped to the police (Sorenson, 1996). As multiracial feminists demand, we must be aware of and understand the complex interplay between race, class, gender, and colonization behind and revealed by the empirical data in designing any response to the sexual assault of women of color.

Some of these issues raise questions about whether they will lead to a disproportionate number of persons of color being either inclined or disinclined to choose (or to be more or less likely to be funneled into) restorative justice. In addition, questions arise as to whether they are so powerful and prevalent that we will continue to see a racial breakdown that does not reflect rape prevalence statistics (Koss, 2000). The RESTORE program is designed to monitor such potential outcomes and make recommendations accordingly. Finally and related, the RESTORE program is designed to closely monitor the possibility that the process might become racialized in the sense that Whites are funneled into one sort of justice and non-Whites into another, regardless of the direction of that funneling. A restorative justice option has the potential to mediate the racism of the criminal legal system, provided it is carefully designed and operated with these concerns kept front and center at all times.

As demonstrated by the foregoing discussion, feminism embraces multiple perspectives and theories, such that the appropriate term is not the singular but the plural: *feminisms* (Ayers, 2001; Daly & Chesney-Lind, 1988). Despite these various strands, a few precepts tend to thread through them. First, each theory—with the exception of a narrow strand of difference feminism that holds fast to pure biological determinism—incorporates the understanding that gender is socially, historically, and culturally constructed (Daly & Chesney-Lind, 1988; Goldfarb, 1991). Thus,

gendered harm, such as sexual violence against women, is similarly constructed. Second, social life and institutions are inextricable from gender and gender relations (Daly & Chesney-Lind, 1988; Goldfarb, 1991); that is, not only do gendered social systems support rape so also do legal institutions' failure to take violence against women seriously create and support that belief system (Braithwaite & Daly, 1998). Third, social and institutional structures are grounded on notions of men's superiority over women; in this vein, violence against women often (although not always) represents the perpetrator's expectations of male dominance and female subordination (Braithwaite & Daly, 1998; Daly & Chesney-Lind, 1988; Goldfarb, 1991).

Fourth, descriptions of and responses to social and legal constructs, institutions, and practices must be grounded in women's lived experiences (Goldfarb, 1991; Stubbs, 2002; cf. Schneider, 1992). Thus, a feminist response to sexual violence against women must take account of and, where possible, map onto survivors' expressed preferences for redress (Cain, 1997). Furthermore, however, most feminist theorists understand that women's lived experiences are not monolithic and universal but are rather culturally diverse, highly contextual, and socially constructed (Schneider, 1992; Seuffert, 1994). This insight triggers two additional considerations. First, a feminist response to the experience of sexual violence accommodates this variety by providing multiple options for survivors, rather than one single cookie-cutter response. Second, however, this so-called positionality—that is, that any individual woman's experience is always and already contingent and constructed—suggests that an individual victim's preference may diverge from what, in the abstract, might be thought of as a "true" feminist response, one that accounts for the larger systemic and institutional history and practice of male sexual dominance over women (Stubbs, 2002).³ One feminist legal scholar, Elizabeth Schneider (1992), urged that both must be accounted for: the particularity of women's lived experiences (and, by extension, expressed preferences based thereon) and the generality of linking women's experiences of abuse to issues of women's subordination in society. Whether a response to sexual violence might nonetheless be able to address the individual preferences of women and the larger systemic issues is no small

matter; however, this is an unavoidable tension when we insist that women's voices and preferences matter.

PARTICULAR FEMINIST CONCERNS ABOUT RESTORATIVE JUSTICE RESPONSES TO VIOLENCE AGAINST WOMEN

Although restorative justice is now used widely and with some success with juveniles, including juvenile sex offenders (see Koss, Bachar, & Hopkins, in press **UPDATE?**), experience with restorative justice in response to violence against adult women is limited (Coker, 1999; Frederick & Lizdas, 2003; Pennell & Francis, 2005). When moving into any new area of research where lives and physical safety may be at stake, it is important to maintain a balance between prudence and the hope of success in applying restorative justice to new areas. One must at all times be mindful of the potential risk of harm to participants (Braithwaite & Strang, 2000).

Some feminist scholars have raised important questions about the wisdom of using restorative justice in response to gendered violence in particular. The majority of these concerns center on whether restorative justice is an effective and safe response to violence against women (see, e.g., Hudson, 1998, 2002; Stubbs, 2002). Whether it is, in fact, safe or effective is, of course, an empirical question (Braithwaite & Strang, 2000).⁴ In her study of Navajo Peacemaker Courts' handling of domestic violence cases, Donna Coker (1999) rightly noted, for instance, that the potential benefits of restorative justice may exist only in theory but not in practice. The same is true for the potential detriments of restorative justice for intimate violence: Whether the detriments will be borne out in practice must be evaluated empirically, something Coker does not purport to undertake. Cognizant of Coker's caution, however, in undertaking such a project it is critical that restorative justice's foray into the new territory of violence against women take these concerns seriously. Such a foray must be guided by these caveats in choosing the types of cases that pose the lowest potential risks to participants and the format for responding to them.

Feminist concerns about using restorative justice for gendered violence fall into several basic categories: (a) physical and emotional safety and well-being, (b) factors that may skew the

ultimate agreement reached by the parties, and (c) skepticism about effectiveness of the intervention. There is no bright line between the two primary categories of violence against women, namely domestic battering and sexual assault. Sexual violence certainly occurs in many battering relationships (Dobash, Dobash, Cavanagh, & Lewis, 2000; Ptacek, 1999).⁵

However, there are several ways that acquaintance sexual assault (excluding marital rape) can differ from ongoing domestic violence, which makes the former the less risky testing ground for a new restorative justice response to gendered violence. In this section, we lay out the reservations discussed in the literature, evaluating their applicability to domestic violence as opposed to acquaintance sexual assault.

PHYSICAL AND EMOTIONAL SAFETY AND WELL-BEING OF SURVIVORS

One of the central theoretical and practical concerns with using restorative justice for gendered violence is that it may subject the survivor to further violence from the responsible party. Particularly with the community conference variety of restorative justice, which typically (although not always) centers on a face-to-face meeting between the responsible party and the survivor, restorative justice, indeed, might create a contact point where the perpetrator might engage in further violence against her (Stubbs, 2002). Certainly as a general matter, when a particular community conference is focused on an assault by an offender who has been violent to the survivor on more than one occasion in the past, the face-to-face structure of community conferencing creates a new logistical opportunity for further acts of violence against the victim. For those who have worked with survivors of domestic violence and have witnessed batterers use formal court proceedings as opportunities for continued abusive conduct, this concern is obvious and real.

With respect to opportunities for further abuse in cases of sexual assault, certainly some sexual assaults that occur in the context of dating relationships may signal the beginning or the continuation of an already established pattern of domestic violence. More typically, however, acquaintance sexual assault spells the end of whatever relationship existed between the parties,

whether immediately or in the short term. Although in established partnerships, sexual assault is typically accompanied by other forms of woman abuse including psychological and physical abuse, more often acquaintance rapes are relatively isolated—albeit traumatic events—that are not followed by further acts of physical or sexual violence by the same perpetrator against the same victim (Koss, 1988)⁶; that is, acquaintance sexual assault poses a significantly lower risk of repeat violence than does ongoing domestic violence. Because of this difference, the concern that physical safety of the survivor may be compromised by the conference itself is more relevant in cases of ongoing battering than in cases of acquaintance sexual assault.⁷

Emotional and psychological abuse by perpetrators of violence against women suggests a related concern about face-to-face restorative justice. In the context of domestic violence, psychological and emotional battering are typically coequal if not more prevalent forms of abuse visited by batterers on their victims and are viewed by many victims as more traumatic than the physical abuse (Dutton, Goodman, & Bennett, 1999; Ptacek, 1999). Just as the conference might provide an opportunity for further physical violence, the argument goes, so too might it allow for continued psychological abuse. Research has demonstrated that acquaintance rapists often employ psychological and emotional coercion among other strategies to carry out an assault (Cleveland, Koss, & Lyons, 1999). It is thus arguably possible that an acquaintance rapist might also engage in postassault abuse, such as belittling threats to ensure silence or other forms of emotional abuse. However, the most characteristic behaviors are confined to denial that his or her behavior was rape, and directing blame to the victim. There is little research on the postrape behavior of acquaintance rapists, much less any research that tells us that they continue abusive contact with the victim. Because of the lack of empirical research on this point, it must be closely watched for and guarded against in the course of restorative justice conferencing.

However, the emotional abuse involved in an ongoing battering relationship typically is more extensive and comprehensive than that which surrounds acquaintance rape, simply by virtue of the length of the relationship and the more extensive involvement of the parties with each other as intimates and potentially coparents rather than acquaintances (see Dutton et al., 1999, for an

analysis of psychological abuse in battering relationships). Although various crime victimization reporting systems attempt to establish bright lines between intimate relationships and acquaintance relationships (for a summary, see Greenfeld et al., 1998), in fact these relationships are points along a continuum of interpersonal relationships. Furthermore, the parties themselves might disagree about where the particular relationship falls on that continuum. For this reason, the RESTORE program is designed to qualitatively assess each case individually, screening out cases that appear to involve ongoing emotional and physical violence.

Another observation is in order, however, concerning a possible difference between batterers' and acquaintance rapists' purpose in engaging in psychological abuse; that is, although the power or control dynamics of domestic battering are more complex than much feminist literature allows, a batterer often uses psychological and emotional abuse as a technique for either obtaining or maintaining control over the victim and keeping her in a relationship with him (Dutton et al., 1999; Mahoney, 1991; compare Dobash et al., 2000). For instance, apologies for the violence—discussed at length in connection with the second category of feminist concerns below—are often a tool for drawing a victim back into an ongoing violent relationship. In cases of acquaintance sexual assault, postassault emotional abuse (i.e., that which theoretically might occur during the conference), where the parties are by definition not engaged in an ongoing intimate relationship, would arguably serve a different function, possibly even the opposite function of distancing himself from the survivor. Because a batterer's purpose in using psychological and emotional abuse is often long term and related to coercing further behavior by the survivor, it is less amenable to external control by conference organizers.⁸ For those cases of acquaintance rape in which an ongoing intimate relationship is not an issue, good preconference preparation and consistently enforced rules of conduct for the conference itself could be expected to minimize the occurrence of further psychological and emotional harm to the survivor. This is, of course, an empirical question to be studied as well as handled carefully. Whether one or the other result occurs is undoubtedly closely tied to the care with which cases are

selected, the quality of preconference preparation, and the conduct of the conference itself.

Third, this possible distinction between motivations for emotional abuse by batterers versus acquaintance rapists relates to another feminist concern about the use of restorative justice for gendered violence: that community conferencing, in particular, might intentionally or unintentionally pressure a victim into returning to a potentially dangerous relationship (Stubbs, 2002). Specifically, it is argued that a conference that brings together a domestic batterer and his victim will allow for further psychological and emotional abuse and coercion by him that will manipulate her into returning to a relationship in which she might suffer further physical or emotional harm. Again, in contrast to domestic battering, an ongoing intimate relationship is typically not the focus of the survivor of acquaintance rape (Cleveland et al., 1999). Because an ongoing romantic relationship—coerced or otherwise—is not the goal for survivors of acquaintance rape, the concern that the conference will drive the survivor back into a relationship with him will ordinarily not be applicable to cases of acquaintance sexual assault.

FACTORS THAT MAY SKEW THE AGREEMENT REACHED DURING THE CONFERENCE

The second set of concerns expressed about the use of restorative justice for gendered violence centers on factors that might yield an agreement between the parties that does not reflect the survivor's preferences or that is otherwise skewed because of quasi-extrinsic factors that are at work. These factors are similarly of more relevance to cases of domestic violence than sexual assault.

The primary agreement-skewing concern is that the power dynamics at work in gendered violence will ensure that conferencing will yield poor results for victims unable to hold their own in the face-to-face meeting (Stubbs, 2002). As discussed above, in relationships where there is ongoing violence, the violence itself is often one tool among many by which the batterer attempts to maintain control over his partner (Dobash et al., 2000). The simple and real fear of future violence alone may cause a victim of ongoing violence to accede to terms to which she would not

otherwise agree. Thus, these power dynamics can skew bargaining power in a community conference and thus yield an agreement that does not adequately or accurately reflect the survivor's interests or wishes. As discussed above, this power dynamic is simply less likely to be entrenched in cases of acquaintance sexual assault, particularly when there was only a single incident between persons who had known each other a relatively short time. Thus, it is more likely that the reparations agreement will more closely track the victim's interests and wishes.

The second and related concern is that not only might fear constrain a survivor's full agency but also other forms of enmeshment between survivor and offender might do the same. If she has children with the offender her connection to her children may compromise her otherwise "free" choice, as might intertwined economic resources (Stubbs, 2002).⁹ Moreover, the relationship between the survivor and the offender creates another tie between them: the survivor's desire to preserve the relationship may affect her willingness to agree to terms not otherwise aligned with her interests. Again, the likelihood of deep emotional, economic, and psychological enmeshment between survivor and perpetrator occurs more in the context of an ongoing intimate relationship than when the parties are not involved in such a relationship. Similarly, cases of acquaintance rape are less likely to involve children in common between the responsible party and the survivor and, therefore, are less likely to yield agreements that are against the interests of the survivor.

The final concern raised by feminists that implicates a skewed outcome relates to the role of apology. To the extent apology might be important to restorative justice concepts—a debatable issue—the use of apology in cases of domestic violence is often coercive rather than healing (Stubbs, 2002).¹⁰ Domestic violence offenders often apologize for their violence afterward and ask for forgiveness from and reconciliation with their partner. Frequently, truly caring for and wishing to continue in their relationship with the offender, survivors are often persuaded by these apologies that he is truly remorseful and dedicated to change. Although these offenders may often feel transitory remorse for their actions and think that they will not engage in future battering, when these apologies are echoed following second, third, or

fourth incidents of violence, their function in manipulating the survivor to return to the relationship becomes patent.

By contrast, perpetrators of acquaintance rape usually do not perceive that they have done something wrong and, instead, deeply and sincerely believe that the victim consented to the sexual encounter (Serin & Mailloux, 2003). Because of this, apology or expressions of remorse are infrequent following a sexual assault and, therefore, do not carry the same coercive history or function as they do in domestic violence relationships. If apology were critical to restorative justice interventions, and arguably it is not, it is at least less problematic in sexual assault cases than in domestic battering cases.

SKEPTICISM ABOUT THE EFFECTIVENESS OF A RESTORATIVE JUSTICE INTERVENTION AND SOCIAL NORM CHANGE

The final concern about the use of restorative justice for gendered violence centers on its ability to address the underlying systemic oppressions and norms that feminist theorists have identified as undergirding the problem of gendered violence. This critique focuses not so much on the question of specific deterrence and individual behavioral change but rather on the issue of general deterrence and social norm change. The ability of restorative justice to affect or deconstruct the systemic oppression of women that undergirds gendered violence taps into some of the strands of feminist theory described previously. One could argue, for instance, that a restorative justice response to intimate violence against women violates the central tenet of liberal feminism that crimes of interpersonal violence against women receive the same treatment as crimes of interpersonal violence against men; that is, if incarceration and fines are the norm for male-on-male violence, then taking incarceration and fines off the table for gendered violence constitutes justice "lite" for female victims of male violence. As discussed at the outset, acquaintance rapes, in particular, do not currently result in significant, if any consequences for offenders. Thus, one could argue, a restorative justice response that triggers some consequences for the violence is at least an improvement. An improvement is not sufficient, however, to overcome the basic critique that justice responses to

violence against women, particularly violence by acquaintances, are less serious than justice responses to violence against men by strangers.

However, because sexual violence by acquaintances causes a unique harm, including harm not just to the primary victim but also to her relationships with others, it might warrant a particularized remedy such as restorative justice that directly addresses that harm. In this sense, then, restorative justice would not be treating similar crimes differently but rather would be treating different crimes differently. A victim-centered restorative justice response that yields reduced trauma to victims, responds to victims' expressed preferences, and fashions redress in accordance with those preferences could thus be consistent with liberal feminism. Furthermore, an alternative to the trauma of a criminal trial may ultimately increase reporting of sexual assault and thereby change our understanding of the prevalence of the problem and increase community awareness of it. This increased community understanding might not only might lead to fewer incidents of acquaintance sexual assault but also could simultaneously create a more educated jury pool that may make good the promise of existing sexual assault laws. In this way, restorative justice for sexual assault holds great potential for deconstructing the systemic belief systems and norms on which gendered violence rests.

The foregoing concerns have substantial merit and cannot and should not be ignored. However, a restorative justice response that is designed with feminist concepts in mind, and that responds to those concerns to the extent possible, is worth considering if early evaluations of its effectiveness in reducing repeat offending demonstrated by Pennell and Burford (2000a, 2000b) are replicated in Pennell and Francis's (2005) discussed in this issue. Furthermore, because cases of gendered sexual violence theoretically pose reduced safety risks compared with the cases of ongoing violence in Pennell's work, they may provide an even more effective field for exploring the possible benefits and effectiveness of using restorative justice for gendered violence.

CONCLUSION: DESIGNING RESTORE WITH FEMINIST CONCEPTS AND CONCERNS IN MIND

In developing our research demonstration project, RESTORE, described in detail elsewhere (see Koss et al., 2003a, 2003b), we placed the foregoing concerns front and center. Our aim was to test the use of restorative justice on the class of cases that triggered the fewest of the theoretical risks raised in the scholarly literature, while posed the greatest likelihood of success. As the analysis presented here reveals, on a theoretical level most of the concerns expressed by feminists apply more to cases of ongoing family violence than they do to cases of nonpenetration sex offenses (indecent exposure and peeping) or acquaintance sexual assault. We, therefore, chose the latter types of cases for inclusion in our research demonstration project and specifically excluded those cases where the responsible party had any prior arrests for domestic violence or the assault was part of an ongoing pattern of domestic violence. These cases present a safer first step in attempts to apply restorative justice to gendered violence.

However, the approach taken in RESTORE embodies many of the other feminist concepts described in this article. First, RESTORE provides consequences for gendered sexual violence where the existing justice system does not, thus moving a step toward liberal feminism's demand that gendered harms receive sanctions by the justice system. Second, conferencing allows for individualized harm recounting and individualized remedy formation, thereby taking account of the cultural feminist call that justice responses heed women's voices. In addition, restorative justice embraces the idea espoused by cultural feminism that connection and relationships matter and should be central to justice responses to violence (Pranis, 2002). Provision of facilitators with experience in sexual assault, as well as incorporating a support system for victims, further recognizes the importance of relationships and community. Third, restorative justice also provides a less structurally hierarchical framework for resolution of gendered harms than traditional criminal justice, thus mapping onto the central concern of radical feminism. Fourth, this approach addresses the economic inequality—systemic and particularized—that is of concern to Marxist and socialist feminists. For instance, on a particularized level, reparations agreements

can redress the economic harm caused by the violence. Furthermore, the existing criminal justice system provides legal counsel to defendants even if they cannot afford an attorney themselves; however, there is no comparable provision for poor victims even in states that have a victim's bill of rights. Drawing on the pro bono services of experienced RESTORE-educated attorneys, RESTORE offers victims free legal consultation, eliminating the power differential of disparate economic resources that might exist between victim and responsible party that remain unmediated by the current justice system. Fifth, as a victim-empowering vehicle, restorative justice will help break down the gendered constructs of passive and powerless victim and empowered aggressor. Finally, the community conferencing model, in particular, allows for culturally relevant responses to the harm caused, as well as responses that take account of intersecting forms of oppression, as urged by multiracial feminist theory.

Despite this great promise, the real test is empirical. Our restorative justice demonstration project offers the opportunity to assess whether restorative justice is a safe and effective method of dealing with individual cases of violence against women, eventually to deconstruct systems of oppression that trigger, construct, and maintain gendered violence. If the evidence demonstrates that it is failing in either regard, however, we must be committed to stepping back and revisiting the theoretical and structural grounding of this approach.

NOTES

1. In various sentencing guideline schemes, remorse is sometimes relevant in determining the statutorily dictated sentence. Remorse itself does not necessarily equate with a direct apology to the victim. One can feel regret or sorrow for having committed a crime, even say that one is sorry for having done so, but an apology made to the victim is not a necessary component to an expression of remorse.

2. MacKinnon claims that her dominance theory is feminism, as opposed to one form of feminist theory (see Ertman, 1998).

3. In some contexts, a victim's expressed preference may not only be mediated and formed through cultural influence, but also may be compromised or constrained by immediate circumstances. For instance, a victim of domestic violence may feel her choices are limited because of the potential future violence from her abuser. In addition, if she has children with her abuser, her connection to those children may further limit her full atomistic agency (Stubbs, 2002). These limitations on women's agency are not present in date and acquaintance rape cases accepted into the RESTORE program.

4. Others who have studied restorative justice in indigenous contexts similarly question whether restorative justice will work in all cultural contexts (Coker, 1999). This is equally an empirical question. Whether restorative justice will undercut or bolster class, race, gender, and other oppressions must also be carefully watched (Daly, 2002).

5. In this section, we use the terms sexual assault and rape interchangeably, perhaps risking confusion. As a matter of law, however, these terms are often not so fluidly employed. In some state statutory schemes a distinction is made between rape and sexual assault, with the former involving penetration and the latter involving cases in which penetration does not take place. Many state statutory schemes have begun shifting away from the term rape altogether and towards the more general term, sexual assault, for all contact sex offenses. In these more "modern" schemes, non-contact sex offenses such as peeping and exposure sometimes are also referred to as sexual assaults, but more often are referred to generically as "sex offenses."

6. In a national study of college rape conducted by one of this article's co-authors (Koss, 1988), the average number of rapes per victim was 2.02. That study did not reveal whether the second rape was by the same perpetrator. Although 42% of the women in the study had sex again with the man who raped them, the research did not assess whether that was a second rape or a consensual attempt on the woman's part to regain control. However, 87% of the relationships ended, and the women did not continue to become enmeshed in the relationship in the way that is true in cases of marital rape.

7. This is not to say that physical safety of other participants is irrelevant or not of concern. It is possible that community conferences for sexual assault that involved the victim's family and friends, for instance, might lead to physical violence against the responsible party. Any restorative justice program must take into account the physical safety of all participants and be prepared to deal with it should violence erupt.

8. The *actual* long-term effectiveness of physical and psychological violence at maintaining power and control over the victim is questionable, of course (see Dobash et al., 2000). The focus here, however, is on the batterer's perceived goals and not whether he might in fact achieve them.

9. "Free" is in quotes since the notion of truly free, unconstrained choice has been thoroughly debunked by postmodern philosophers.

10. Whether or not apology in fact is an inherent component of a restorative justice response is as yet under-theorized in the literature and under-analyzed empirically. One notable exception to this is Carrie Petrucci's (2002) research on apology and therapeutic jurisprudence, a movement very closely aligned with restorative justice. For other discussions of apologies in other contexts, see Brooks (1999), Cohen (1999, 2000), Ohbuchi et al. (1989), and Orenstein (1999).

REFERENCES

- Alcoff, L. (1994). Cultural feminism versus post-structuralism: The identity crisis in feminist theory. In N. B. Dirks, G. Eley, & S. B. Ortner (Eds.), *Culture/power/history: A reader in contemporary social theory* (pp. 96-122). Princeton, NJ: Princeton University Press.
- Ayers, S. (2001). Incest in a thousand acres: Cheap trick or feminist re-vision. *Texas Journal of Women and the Law*, 11, 131-156.
- Bachman, R. (2003, September). *The epidemiology of rape and sexual assaults against American Indian women: An analysis of NCVS data*. Paper presented to a federal and tribal working group on sexual assault against Native women, **CITY & STATE WHERE PRESENTED**.
- Baker, K. (1999). Sex, rape, and shame. *Boston University Law Review*, 79, 663-716.

- Beck, A. J., & Harrison, P. M. (2001) **CORRECT YEAR**. *Prisoners in 2000* (NCJ 188207). Washington, DC: U.S. Department of Justice, Office of Justice Programs.
- Braithwaite, J., & Daly, K. (1998). Masculinities, violence and communitarian control. In S. L. Miller (Ed.), *Crime control and women: Feminist implications of criminal justice policy* (pp. 151-180). Thousand Oaks, CA: Sage.
- Braithwaite, J., & Strang, H. (2000). Connecting philosophy to practice. In H. Strang & J. Braithwaite (Eds.), *Restorative justice: Philosophy to practice* (pp. 203-220). Aldershot, UK: Dartmouth Publishing.
- Brooks, R. L. (Ed.). (1999). *When sorry isn't enough: The controversy over apologies and reparations for human injustice*. New York: New York University Press.
- Burdon, W. M., & Gallagher, C. A. (2002). Coercion and sex offenders: Controlling sex offending behavior through incapacitation and treatment. *Criminal Justice and Behavior*, 2, 87-109.
- Cain, P. (1997). The future of feminist legal theory. *Wisconsin Women's Law Journal*, 11, 367-384.
- Campbell, R. (1998). The community response to rape: Victims' experience with the legal, medical, and mental health systems. *American Journal of Community Psychology*, 26, 357-379.
- Campbell, R., Sefl, T., Barnes, H. E., Ahrens, C. E., Wasco, S. M., & Zaragoza-Diesfeld, Y. (1999). Community services for rape survivors: Enhancing psychological well-being or increasing trauma? *Journal of Consulting and Clinical Psychology*, 67, 847-858.
- Cleveland, H. H., Koss, M. P., & Lyons, J. (1999). Rape tactics from the survivor's perspective: Contextual dependence and within-event independence. *Journal of Interpersonal Violence*, 14, 532-547.
- Cohen, J. R. (1999). Advising clients to apologize. *Southern California Law Review*, 72, 1009-1070.
- Cohen, J. R. (2000). Apology and organizations: Exploring an example from medical practice. *Fordham Urban Law Journal*, 27, 1447-1482.
- Coker, D. (1999). Enhancing autonomy for battered women: Lessons from Navajo peacemaking. *University of California Law Review*, 47, 1-99.
- Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43, 1241-1299.
- Curran, D. J., & Renzetti, C. M. (2001). *Theories of crime*. Needham Heights, MA: Allyn & Bacon.
- Daly, K. (2002). Sexual assault and restorative justice. In H. Strang & J. Braithwaite (Eds.), *Restorative justice and family violence* (pp. 62-88). Cambridge, UK: Cambridge University Press.
- Daly, K., & Chesney-Lind, M. (1988). Feminism and criminology. *Justice Quarterly*, 5, 497-538.
- Deer, S. (2004a). Towards an indigenous jurisprudence of rape. *Kansas Journal of Law and Public Policy*, 14, 121-143.
- Deer, S. (2004b, April). *Untitled presentation*. Paper presented at Beyond Prosecution: Sexual Assault Victims' Rights in Theory and Practice conference at Suffolk Law School, Boston.
- Deer, S. (in press) **UPDATE**. Expanding the network of safety: Tribal protection orders and survivors of sexual assault. *Tribal Law Journal*.
- Des Rosiers, N., Feldthusen, B., & Hankivsky, O. A. R. (1998). Legal compensation for sexual violence: Therapeutic consequences for the judicial system. *Psychology, Public Policy, and Law*, 4, 433-451.
- Dobash, R. E., Dobash, R. P., Cavanagh, K., & Lewis, R. (2000). *Changing violent men*. Thousand Oaks, CA: Sage.

- Drumbl, M. (2002). Restorative justice and collective responsibility: Lessons for and from the Rwandan genocide. *Contemporary Justice Review*, 5, 5-22.
- Dutton, M. A., Goodman, L. A., & Bennett, L. (1999). Court-involved battered women's responses to violence: The role of psychological, physical, and sexual abuse. *Violence and Victims*, 14, 89-104.
- Eichner, M. (2001). On postmodern legal theory. *Harvard Civil Rights-Civil Liberties Law Review*, 36, 1-78.
- Ertman, M. (1998). Commercializing marriage: A proposal for valuing women's work through premarital security agreements. *Texas Law Review*, 77, 17-110.
- Fagan, J., West, V., & Holland, J. (2003). Reciprocal effects of crime and incarceration in New York City neighborhoods. *Fordham Urban Law Journal*, 30, 1551-1602.
- Fineman, M. L. (1983). Implementing equality: Ideology, contradiction and social change, a study of rhetoric and results in the regulation of the consequences of divorce. *Wisconsin Law Review*, 4, 789-886.
- Fisher, B. S., Cullen, F. T., & Turner, M. G. (2000). *The sexual victimization of college women*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, National Institute of Justice.
- Flavin, J. (2004). Feminism for the mainstream criminologist: An invitation. In B. R. Price & N. J. Sokoloff (Eds.), *The criminal justice system and women: Offenders, prisoners, victims, and workers* (pp. 31-49). New York: McGraw-Hill.
- Frazier, P. A., & Haney, B. (1996). Sexual assault cases in the legal system: Police, prosecutor, and victim perspectives. *Law and Human Behavior*, 20, 607-628.
- Frederick, L., & Lizdas, K. (2003). *The role of restorative justice in the battered women's movement*. Retrieved December 12, 2004, from www.bwjp.org/documents/finalrj.pdf
- Frohmann, L. (1997). Convictability and discordant locales: Reproducing race, class, and gender ideologies in prosecutorial decision-making. *Law and Society Review*, 31, 531-555.
- Frohmann, L. (1998). Constituting power in sexual assault cases: Prosecutorial strategies for victim management. *Social Problems*, 45, 393-407.
- Gallagher, C. A., Wilson, D., Hirschfield, P., Coggeshall, M. B., & MacKenzie, D. (1999). A quantitative review of the effects of sex offender treatment on sexual reoffending. *Corrections Management Quarterly*, 3, 19-29.
- Gilligan, C. (1982). *In a different voice*. Cambridge, MA: Harvard University Press.
- Goldfarb, P. (1991). A theory-practice spiral: The ethics of feminism and clinical education. *Minnesota Law Review*, 75, 1599-1700.
- Greenfeld, L. A. (1997). *Sex offenses and offenders: An analysis of data on rape and sexual assault*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- Greenfeld, L. A., Rand, M. R., Craven, D., Flaus, P. A., Perkins, C. A., Ringel, C., et al. (1998). *Violence by intimates: Analysis of data on Crimes by current or former spouses, boyfriends, and girlfriends*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- Greenfeld, L. A., & Smith, S. K. (1999). *American Indians and crime*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- Grieco, E. M., & Cassidy, R. C. (2001). *Census 2000 brief: Overview of race and Hispanic origin*. Washington, DC: U.S. Department of Labor, Bureau of the Census. Available at www.census.gov/prod/2001pubs/c2kbr01-1.pdf
- Gutheil, T. G., Bursztajn, H., Brodsky, A., & Strasburger, L. H. (2000). Preventing "critogenic" harms: Minimizing emotional injury from civil litigation. *Journal of Psychiatry and Law*, 28, 5-18.
- Holmstrom, L. L., & Burgess, A. W. (1975). Rape: The victim and the criminal justice system. *International Journal of Criminology and Peneology*, 3, 101-110.
- Holmstrom, L. L., & Burgess, A. W. (1978). *The victim of rape: Institutional reactions*. New York: John Wiley.

- Hopkins, C. Q., & Koss, M. P. (2005). *Restorative justice for sex offenses: Doctrinal and constitutional challenges*. Unpublished manuscript, Washington and Lee University School of Law, Lexington, VA.
- Hudson, B. (1998). Restorative justice: The challenge of sexual and racial violence. *Journal of Law and Society*, 25, 237-256.
- Hudson, B. (2002). Restorative justice and gendered violence: Diversion or effective justice? *British Journal of Criminology*, 42, 616-634.
- Kay, H. H. (1985). Equality and difference: The case of pregnancy. *Berkeley Women's Law Journal*, 1, 1-38.
- Iglesias, E. M. (1996). Rape, race and representation. *Vanderbilt Law Review*, 49, 868-992.
- Kilpatrick, D. G., Edmunds, C. N., & Seymour, A. E. (1992). *Rape in America: A report to the nation*. Arlington, VA: National Crime Victims Center.
- Koss, M. P. (1988). Hidden rape. In A. W. Burgess (Ed.), *Rape and sexual assault II* (pp. 3-25). New York: Garland.
- Koss, M. P. (2000). Blame, shame, and community justice responses to violence against women. *American Psychologist*, 55(11), 1332-1343.
- Koss, M. P., Bachar, K. J., & Hopkins, C. Q. (2003a). An innovative application of restorative justice to the adjudication of selected sexual offenses. In H. Kury & J. Obergfell-Fuchs (Eds.), *Crime prevention: New approaches* (pp. 321-333). Mainz, Germany: Weisser Ring.
- Koss, M. P., Bachar, K. J., & Hopkins, C. Q. (2003b). Restorative justice for sexual violence: Repairing victims, building community, and holding offenders accountable. *Annals of the New York Academy of Sciences*, 989, 364-377.
- Koss, M. P., Bachar, K. J., & Hopkins, C. Q. (in press) **UPDATE**. Disposition and treatment of juvenile sex offenders from the perspective of restorative justice. In H. Barbaree (Ed.), *Handbook on the treatment of juvenile sexual offenders*. **CITY, STATE, & PUBLISHER**
- Law, S. A. (1984). Rethinking sex and the constitution. *University of Pennsylvania Law Review*, 132, 955-1040.
- MacKinnon, C. (1989). *Toward a feminist theory of the state*. Cambridge, MA: Harvard University Press.
- Madigan, L., & Gamble, N. E. (1989). *The second rape: Society's continued betrayal of the victim*. New York: Lexington Books.
- Mahoney, M. (1991). Legal images of battered women: Redefining the issue of separation. *Michigan Law Review*, 90, 1-94.
- Martin, P. Y., & Powell, M. (1994). Accounting for the second assault: Legal organizations' framing of rape victims. *Law and Social Inquiry*, 14, 853-890.
- Matosian, G. (1993). *Reproducing rape: Domination through talk in the courtroom*. Chicago: University of Chicago Press.
- McNair, L. D., & Neville, H. A. (1996). African American survivors of sexual assault: The Intersection of race and class. *Women and Therapy*, 18, 107-119
- Moraga, C., & Anzaldúa, G. (1983). *This bridge called my back: Writings by radical women of color*. New York: Women of Color Press.
- Ohbuchi, K., Kameda, M., & Agarie, N. (1989). Apology as aggression control: Its role in mediating appraisal of and response to harm. *Journal of Personality and Social Psychology*, 56, 219-227.
- Ollenburger, J. C., & Moore, H. A. (1998). *A sociology of women: The intersection of patriarchy, capitalism, and colonization*. Upper Saddle River, NJ: Prentice Hall.
- Orenstein, A. (1999). Apology expected: Incorporating a feminist analysis into evidence policy where you would least expect it. *Southwestern University Law Review*, 28, 221-280.
- Owens, M. (2004, January 8). Surprises in the family tree. *New York Times*, pp. F1.
- Pennell, J., & Burford, G. (2000a). Family group decision making: Protecting children and women. *Child Welfare*, 79, 131-158.

- Pennell, J., & Burford, G. (2000b). Family group decision making and family violence. In G. Burford & J. Hudson (Eds.), *Family group conferences: New directions in community-centered child and family practice* (pp. 171-185). Hawthorne, NY: Aldine de Gruyter.
- Pennell, J., & Francis, S. (2005). Safety conferencing: Toward a coordinated and inclusive response to safeguard women and children. *Violence Against Women*, **PE: IN THIS ISSUE? VOL, ISS, PAGES**, .
- Petrucci, C. J. (2002). Apology in the criminal justice setting: Evidence for including apology as an additional component in the legal system. *Behavioral Science and the Law*, *20*, 337-362.
- Pranis, K. (2002). Restorative values and confronting family violence. In H. Strang & J. Braithwaite (Eds.), *Restorative justice and family violence* (pp. 23-41). Cambridge, UK: Cambridge University Press.
- Prentky, R. A., Lee, A. F., Knight, R. A., & Cerce, D. (1997). Recidivism rates among child molesters and rapists: A methodological analysis. *Law and Human Behavior*, *21*, 635-659.
- Proctor, B. D., & Dalaker, J. (2003). *Current population reports: Poverty in the United States: 2002*. Washington, DC: U.S. Department of Labor, Bureau of the Census.
- Ptacek, J. (1999). *Battered women in the courtroom*. Boston: Northeastern University Press.
- Razack, S. (1994). What is to be gained by looking White people in the eye?: Culture, race, and gender in cases of sexual violence. *Signs*, *19*, 894-923.
- Razack, S. (1998). What is to be gained by looking White people in the eye? Culture, race, and gender in cases of sexual violence. In K. Daly & L. Maher (Eds.), *Criminology at the crossroads: Feminist readings in crime and justice* (pp. 225-245). New York: Oxford University Press.
- Riordan, S. (1999). Indecent exposure: The impact upon the victim's fear of sexual crime. *Journal of Forensic Psychiatry*, *10*, 309-316.
- Sanday, P. R. (1996). *A woman scorned: Acquaintance rape on trial*. New York: Doubleday.
- Schneider, E. (1992). Particularity and generality: Challenges of feminist theory and practice in work on woman-abuse. *New York University Law Review*, *67*, 520-568.
- Schram, L. B., Miller, L. L., & Milloy, C. (1995). A sentencing alternative for sex offenders: A study of decision making and recidivism. *Journal of Interpersonal Violence*, *10*, 487-502.
- Serin, R. C., & Mailloux, D. L. (2003). Assessment of sex offenders: Lessons learned from the assessment of non-sex offenders. *Annals of the New York Academy of Sciences*, *989*, 185-197.
- Seuffert, N. (1994). Lawyering and domestic violence: A feminist integration of experiences, theories and practices. In J. Stubbs (Ed.), *Women, male violence and the law* (pp. 79-103). Sydney, Australia: Institute of Criminology.
- Sokoloff, N. J., Price, B. R., & Flavin, J. (2004). The criminal law and women. In N. J. Sokoloff & B. R. Price (Eds.), *The criminal justice system and women: Offenders, prisoners, victims & workers* (pp. 1-10). New York: McGraw-Hill.
- Sorenson, S. B. (1996). Violence against women: Examining ethnic differences and commonalities. *Evaluation Review*, *20*, 123-145.
- Sorenson, S. B., & Siegel, J. M. (1992). Gender, ethnicity, and sexual assault: Findings from a Los Angeles study. *Journal of Social Issues*, *48*, 93-104.
- Stubbs, J. (2002). Domestic violence and women's safety: Feminist challenges to restorative justice. In H. Strang & J. Braithwaite (Eds.), *Restorative justice and family violence* (pp. 42-61). Cambridge, UK: Cambridge University Press.
- Tjaden, P., & Thoennes, N. (1998). *Prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey*. Washington, DC: U.S. Department of Justice, National Institute of Justice.
- Tjaden, P., & Thoennes, N. (2000). *Full report of the prevalence, incidence, and consequences of violence against women*. Washington, DC: U.S. Department of Justice, National Institute of Justice.

- West, R. (1988). Jurisprudence and gender. *University of Chicago Law Review*, 55, 1-72.
- Whately, M. A. (1996). Victim characteristics influencing attributions of responsibility to rape victims: A meta-analysis. *Aggression and Violent Behavior*, 1, 81-95.
- White, B. A. (1999). Feminist foundations for the law of business: One law and economics scholar's survey and (re)view. *U.C.L.A. Women's Law Journal*, 10, 39-102.
- Williams, J. (1989). Deconstructing gender. *Michigan Law Review*, 87, 797-845.
- Wriggins, J. (1983). Rape, racism and the law. *Harvard Women's Law Journal*, 6, 103-141.
- Wyatt, G. E. (1992). The sociocultural context of African American and White American women's rape. *Journal of Social Issues*, 48, 77-91.
- Zinn, M. B., & Dill, B. T. (1996). Theorizing difference from multiracial feminism. *Feminist Studies*, 22, 321-331.

C. Quince Hopkins is legal advisor for RESTORE and is on the faculty of the Washington and Lee University School of Law. She has worked on legal issues concerning violence against women since 1990, representing victims in individual criminal and civil cases, class actions, through legislative advocacy, and development of the Domestic Violence Legal Clinic at the University of Arizona College of Law. A former Stanford Fellow, Hopkins is a candidate for the Doctor of Juridical Sciences at Stanford Law School.

Mary P. Koss is the principal investigator of the RESTORE Project and is on the faculty of the Mel and Enid Zuckerman Arizona College of Public Health at the University of Arizona. She works to prevent violence and improve policy responses through service to boards such as the Governor's Commission on Prevention of Violence Against Women, and on the management committee of the Sexual Violence Research Initiative based at the World Health Organization. She has worked in sexual assault for more than 25 years, in recognition of which she received the Committee on Women in Psychology of the American Psychological Association 2003 Leadership Award.